The Republican Senator, Edmund G. Ross of Kansas, who ''looked down into my open grave'' of political oblivion when he cast one of the decisive votes in acquitting Andrew Johnson in spite of his personal dislike of the President explained his motivation this way:

. . . In a large sense, the independence of the executive office as a coordinate branch of the government was on trial . . . If . . . the President must step down . . . upon insufficient proofs and from partisan considerations, the office of President would be degraded, cease to be a coordinate branch of government, and ever after subordinated to the legislative will. It would practically have revolutionized our splendid political fabric into a partisan Congressional autocracy.

While our government is certainly on a stronger foundation now than in the aftermath of the Civil War, the basic point remains valid. If anything, in today's world of rapidly emerging events and threats, we need an effective, independent Presidency even more than did mid-19th Century Americans.

While in the history of the United States the U.S. Senate has never before considered impeachment articles against a sitting elected official, we do have numerous cases of each House exercising its Constitutional right to, ''punish its Members for disorderly behavior, and, with the concurrence of two-thirds expel a Member.'' However, since the Civil War, while a variety of cases involving personal and private misconduct have been considered, the Senate has never voted to expel a member, choosing to censure instead on seven occasions, and the House has rarely chosen the ultimate sanction. Should the removal of a President be subject to greater punishment with lesser standards of evidence than the Congress has applied to itself when the Constitution appears to call for the reverse in limiting impeachment to cases of ''treason, bribery and other high crimes or misdemeanors''? In my view, the answer must be NO.

Thus, for me, as one United States Senator, the bar for impeachment and removal from office of a President must be a high one, and I want the record to reflect that my vote to dismiss is based upon a standard of evidence equivalent to that used in criminal proceedings—that is, that guilt must be proven ''beyond a reasonable doubt''—and a standard of impeachable offense which, in my view, conforms to the Founders' intentions that such an offense must be one which represents official misconduct threatening grievous harm to our whole system of government. To quote Federalist #65, Hamilton defined as impeachable, ''those offenses which proceed from the misconduct of public men, or, in other words, from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated POLITICAL, as they relate chiefly to injuries done immediately to the society itself.'' As I have said before, I can conceive of instances in which both perjury and obstruction of justice would meet this test, and I certainly believe that most, if not all, capital crimes, including murder, would qualify for impeachment and removal from office. However, in my judgment, the current case does not reach the necessary high standard.

In the words of John F. Kennedy, ''with a good conscience our only sure reward, with history the final judge of our deeds,'' I believe that dismissal of the impeachment case against William Jefferson Clinton is the appropriate action for the U.S. Senate. It is the action which will best preserve the system of government which has served us so well for over two hundred years, a system of checks and balances, with a strong and independent chief executive.

In closing, I wish to address those in the Senate and House, and among the American public, who have reached a different conclusion than have I in this case. I do not question the sincerity or legitimacy of your viewpoint. The process itself pushes us to make absolute judgments—yes or no to conviction and removal from office—and the nature of debate yields portraits of complex issues in stark black-and-white terms, but I believe it is possible for reasonable people to reach different conclusions on this matter. Indeed, I recognize that, while my decision seeks to avoid the dangers of setting the impeachment bar too low, setting that bar too high is not without risks. I believe the House Managers spoke eloquently about the need to preserve respect for the rule of law, including the critical principle that no one, not even the President of the United States, is above that rule. However, I have concluded that the threat to our system of a weakened Presidency, made in some ways subordinate to the will of the legislative branch, outweighs the potential harm to the rule of law, because that latter risk is mitigated by:

An intact, independent criminal justice system, which indeed will retain the ability to render final, legal judgment on the President's conduct;

A vigorous, independent press corps which remains perfectly capable of exposing such conduct, and of extracting a personal, professional and political price; and

An independent Congress which will presumably continue to have the will and means to oppose Presidents who threaten our system of government.

By the very nature of this situation, where I sit in judgment of a Democratic President as a Democratic Senator, I realize that my decision cannot convey the non-partisanship which is essential to achieve closure on this matter, one way or the other. Indeed, in words which could have been written today, the chief proponent among the Founding Fathers of a vigorous Chief Executive, Alexander Hamilton, wrote in 1788, in No. 65 of The Federalist Papers, that impeachments ''will seldom fail to agitate the passions of the whole community, and to divide them into parties, more or less friendly or inimical, to the accused. In many cases, it will connect itself with the pre-existing factions, and will enlist all their animosities, partialities, influence and interest on one side, or on the other; and in such cases there will always be the greatest danger, that the decision will be regulated more by the comparative strength of the parties than by the real demonstration of guilt or innocence.''

I have, however, in making my decision laid out for you the standards which I believe to be appropriate whenever the Congress considers the removal from office of an elected official, whether Executive Branch, or Legislative Branch. I will do my best to stand by those standards in all such cases to come before me while I have the privilege of representing the people of Georgia in the United States Senate, regardless of the party affiliation of the accused. I only hope and pray that no future President, of either Party, will ever again engage in conduct which provides any basis, including the basis of the current case, for the Congress to consider the grave question of impeachment.●

MOTIONS TO DISMISS AND TO SUBPOENA WITNESSES

● Mr. FEINGOLD. Mr. President, during yesterday's impeachment trial proceedings, I voted against the motion to dismiss offered by the senior Senator from West Virginia, Senator BYRD. I also voted in favor of allowing the House Managers to depose a limited number of witnesses in this case. I would like to explain the reasons for my votes.

Let me state first that I understand that this trial is a unique proceeding; it is not precisely a ''trial'' as we understand that term to be used in the criminal context. The Senate, for example, as the Chief Justice made clear in upholding Senator HARKIN's objection early in the trial, is both judge and jury, with the final authority to determine not only the ''guilt'' or ''innocence'' of the defendant, but also the legal standard to apply and what kind of evidence is relevant to the decision.

Nonetheless, Sen. BYRD's motion was a motion to dismiss, which I believe gives the motion a legal connotation we must not ignore. I believe that in order to dismiss the case at this point, a Senator should be of the opinion that it is not possible for the House Managers to show that the President has committed high crimes and misdemeanors, even if they are permitted to call the witnesses that they want to call. Even apart from the possibility of witness testimony, in order to vote for the motion, a Senator should believe that regardless of what occurs in the closing arguments by the parties and in deliberations in the Senate, that a Senator would not vote to convict.

So for me, this motion to dismiss was akin to asking the judge in this case not to send the case to the jury. In a

criminal trial, there is a strong presumption against taking a case out of the hands of the jury, and a very high degree of certainty on the facts of the case is demanded before a judge will take that step. Indeed, a judge must decide that a reasonable juror viewing the evidence in the light most favorable to the prosecution could not vote to convict the defendant, before he will direct a judgment of acquittal.

My view, as of this moment, is that to dismiss this case would in appearance and in fact improperly ''short circuit'' this trial. I simply cannot say that the House Managers cannot prevail regardless of what witnesses might plausibly testify and regardless of what persuasive arguments might be offered either by the Managers or by Senators who support conviction. And when the history of this trial is written, I want it to be viewed as fair and comprehensive, not as having been shortened merely because the result seemed preordained.

As Senator COLLINS and I indicated in a letter to Senator BYRD on Saturday and in a unanimous consent request we offered on Monday, my preference would have been to divide the motion to dismiss and allow separate votes on the two articles of impeachment to more closely approximate the separate final votes on the two articles contemplated by the impeachment rules. It would have allowed the Senate to consider the strength of the evidence presented on the two separate articles and the possibility that one of the articles comes closer to the core meaning of high crimes and misdemeanors than the other.

I believe that many of my colleagues on the Republican side view the perjury article as less convincing than the obstruction article and might have voted to dismiss it had the opportunity to do that been made available. But we will never know. When a final vote is taken on the articles, and I now believe such votes will almost certainly occur, I hope that my colleagues who did not vote to dismiss the case today will carefully consider the two articles separately.

I want to be clear that my vote not to dismiss this case does not mean that I would vote to convict the President and remove him from office or that I am leaning in that direction. I have not reached a decision on that question. It is my inclination, however, to demand a very high standard of proof on this question. Because the House Managers have relied so heavily on the argument that the President has committed the federal crimes of perjury and obstruction of justice as the reason that his conduct rises to the level of high crimes and misdemeanors, they probably should be required to prove each element of those crimes beyond a reasonable doubt. That is the standard that juries in criminal proceedings must apply. In this case, where the ''impeachability'' question rests so much on a conclusion that the President's conduct was not only reprehensible but also criminal, I currently believe that standard is the most appropriate for a Senator to apply.

It is my view at this point that the House Managers' case has some serious problems, and I am not certain that it can be helped by further testimony from witnesses. But I believe it is possible that it can, and the Managers deserve the opportunity to take the depositions they have requested.

In voting against the motion to dismiss and to allow witnesses to be subpoenaed, I have not reached the important question of whether, even if the House Managers manage to prove their case beyond a reasonable doubt, the offenses charged would be ''impeachable'' and require the President to be removed from office. That is an important question that I decided should be addressed in the context of a final vote on the articles after the evidentiary record is complete. Therefore, I want to be clear that my vote against the motion does not mean I am leaning in favor of a final vote to convict the President. I am not.

But I have determined, after much thought, that we must continue to move forward and not truncate the proceeding at this point. I believe that it is appropriate for the House Managers, and if they so choose, the President's Counsel, to be able to depose and possibly to present the live testimony of at least a small number of witnesses. And I want to hear final arguments and deliberate with my colleagues before rendering a final verdict on the articles.

I reached my decision on witnesses for a number of reasons. First, although I recognize that this is not a typical, ordinary criminal trial, it is significant and in my mind persuasive that in almost all criminal trials witnesses are called by the prosecution in trying to prove its case. Because I have decided that the House Managers probably must be held to the highest standard of proof—beyond a reasonable doubt—I believe that they should have every reasonable opportunity to meet that standard and prove their case.

Furthermore, witnesses have been called every time in our history that the Senate has held an impeachment trial. (In two cases, the impeachment of Sen. Blount in 1797 and the impeachment of Judge English in 1926, articles of impeachment passed by the House were dismissed without a trial.) Now I recognize that an unusually exhaustive factual record has been assembled by the Independent Counsel, including numerous interviews with, and grand jury testimony from, key witnesses. That distinguishes this case from a number of past impeachments. But in at least the three judicial impeachments in the 1980s, the record of a full criminal trial (two resulting in conviction and one in acquittal) was available to the Senate and still witnesses testified.

In this case, the House Managers strenuously argued that witnesses should be called. It would call the fairness of the process into question were we to deny the House Managers the opportunity to depose at least those witnesses that might shed light on the facts in a few key areas of disagreement in this case. I regard this as a close case in some respects, and the best course to follow is to allow both sides a fair opportunity to make the case they wish to make.

This does not mean that I support an unlimited number of witnesses or an unnecessarily extended trial. Furthermore, at this point, I am reserving judgment on the question of whether live testimony on the Senate floor should be permitted. I believe the Senate has the power, and should exercise the power, to assure that any witnesses called to deliver live testimony have evidence that is truly relevant to present.

In this regard, I think we should allow somewhat greater latitude to the President's counsel since he is the defendant in this proceeding. I am inclined to give a great deal of deference to requests by the President's counsel to conduct discovery and even call additional witnesses if they feel that is necessary. But at least with respect to the House Manager's case, while we must be fair in allowing them to depose the witnesses they say they need to prove their case, we need not allow them to broaden their case beyond the acts alleged in the articles or inordinately extend the trial with witnesses who cannot reasonably be expected to provide evidence relevant to our decision on those articles.

Finally, let me reiterate. My vote against the motion to dismiss should not be interpreted as a signal that I intend to vote to convict the President. Nor does it mean that I would not support a motion to adjourn or a motion to dismiss offered at some later stage of this trial, although I strongly prefer that this trial conclude with a final vote on the articles. It only means that I do not believe that dismissing the case at this moment is the appropriate course for the Senate to follow.●

MOTION OF THE HOUSE MANAGERS FOR THE APPEARANCE OF WITNESSES AT DEPOSITIONS AND TO ADMIT EVIDENCE

● Mr. LEAHY. Mr. President, the House Managers want to conduct depositions of at least four people and their requests to admit affidavits could very well lead to the depositions of at least three others and, indeed, many more witnesses. The three people they expressly ask be subpoenaed are Monica Lewinsky, Vernon Jordan and Sidney Blumenthal. All three have previously testified before the Starr grand jury and Ms. Lewinsky has been interviewed or testified at least 23 times on these matters over the last year.

The fourth deponent requested by the House Managers is none other than the President of the United States. Although they characterize their request